

REMARKS

Claims 1, 3, 5-8, 10, 12, 22, and 23 are pending. Claims 1, 3, 5-8, 10, and 12 have been rejected. Claims 22 and 23 have been allowed.

Claim Rejections 35 U.S.C. § 102(b)

Claims 1, 3, and 8 have been rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,936,853 to Fabian et al ("Fabian '853").

Fabian '853 discloses tibial stem portion 10, shown in Fig. 1, having Morse taper 12 and aperture 13. Referring to Figs. 3 and 4, tibial stem portion 10 attaches to tibial tray portion 20 via Morse taper 12 and female tapered aperture 22. Additionally, stem portion 10 includes a ledge (not labeled) formed between Morse taper 12 and the body of stem portion 10. In another embodiment, shown in Figs. 2 and 2A, another ledge (not labeled) is formed by the upper surface of flanges 15 and Morse taper 17. When Morse taper 12 or Morse taper 17 is inserted within corresponding tapered aperture 22 of tibial tray portion 20, as shown in Fig. 5, the ledge formed between Morse taper 12 and the body of stem portion 10 or the ledge formed between flanges 15 and Morse taper 17, respectively, contacts the bottom surface of tibial tray portion 20. Articulating surface member 30, containing bearing surface 34 (Fig. 4), is removably attached to tray portion 20 via locking lip 31 which engages a cooperating locking lip 23 on tibial tray portion 20. To further lock tibial tray portion 20 and articulating surface member 30 together, locking screw 35 is inserted through aperture 36 of articulating surface member 30 and threadedly engaged with aperture 13 of tibial stem portion 10.

Applicant respectfully submits that amended independent Claim 1 is not anticipated by Fabian '853, as Fabian '853 fails to disclose each and every limitation called for in amended independent Claim 1. Specifically, amended independent Claim 1 calls for a tibial implant apparatus, including, *inter alia*, a tibial plate have a superior surface and an inferior surface, base extending downwardly from the inferior surface, an elongate member including a shaft having a superior end and an inferior end and a radially projecting *external shoulder* formed adjacent the superior end, the tibial plate and the base defining a through-channel, the elongate member extending through the tibial plate and base superior-distally, the *external shoulder* of the elongated member seated in the through-channel, the superior end of the elongated member defining a superiorly facing, internally threaded, socket.

In forming the rejection, the Examiner relies on a turn of the threads formed within the internal channel of tibial stem portion 10 of Fabian '853 as forming a radially projecting shoulder that is seated in a through channel defined by a tibial plate and base. However, in contrast to Fabian '853, amended independent Claim 1 calls for an elongate member including a shaft having a superior end and an inferior end and a radially projecting *external shoulder* formed adjacent a superior end, the *external shoulder* of the elongated member seated in the through channel, and the superior end of the elongate member defining a superiorly facing, *internal threaded, socket*. Based on the language of amended independent Claim 1, a turn of the thread formed within the bore of stem 10 of Fabian '853 cannot be an external shoulder, as amended independent Claim 1 calls for an *internally threaded, socket*. As defined by amended independent Claim 1, any portion or component within the internal bore formed in stem 10 of Fabian '853 is, by definition, internal. Therefore, a single turn of the threads as a socket formed within stem 10 of Fabian '853 cannot form an *external shoulder*.

Alternatively, the Examiner advances a second rejection utilizing Fabian '853 in which the cruciate cross section of flanges 15, 16 extending from stem 14, as shown in Figs. 2 and 2A of Fabian '853, form radially projecting shoulders with the body of the stem 14. However, much like the shoulder formed between tapered portion 12 and body of stem 10 in Fig. 1, the shoulders formed at the intersection of flanges 15 and Morse taper 17, are prevented from being seated in the through channel defined by the tibial plate and base, as called for amended independent Claim 1. Specifically, as Morse taper 17 is advanced within correspondingly tapered aperture 22, the ledge formed between flanges 15 and Morse taper 17 contacts the bottom surface of tibial tray portion 20. This contact prevents stem portion 14 and, corresponding, Morse taper 17 from being inserted any further into tapered aperture 22 and also prevents the upper surface of flanges 16 from contacting tibial tray portion 20. As a result, Fabian '853 fails to disclose or suggest an elongated member having a radially projecting external shoulder, *the external shoulder seated in a through-channel*.

For the foregoing reasons, applicant respectfully submits that amended independent Claim 1, as well as Claims 3 and 8, which depend therefrom, are not anticipated by Fabian '853.

Claim Rejections - 35 U.S.C. § 103(a)

Claims 5-7, 10, and 12 are rejected under 35 U.S.C. §103(a) as being obvious over Fabian '853 in view of U.S. Patent No. 6,506,216 to McCue et al. ("McCue '216").

McCue '216 discloses tibial prosthesis 10, shown in Fig. 3, including tibial tray 12 and keel 14. Extending from keel 14 are wing elements 26. Modular stem 42 (Fig. 4) includes mating portion 44, fixation portion 46, and a shoulder (not labeled) formed therebetween. Mating portion 44 is configured to mate with stem element 40 of tibial prosthesis 10.

In rejecting Claims 5-7, 10, and 12, the Examiner relied upon Fabian '853 as disclosing all the limitations of amended independent Claim 1, from which Claims 5-7, 10, and 12 depend. As indicated above, Fabian '853 does not disclose or suggest *an elongate member having a radially projecting external shoulder formed adjacent a superior end, the external shoulder of the elongate member seated in a through-channel*, as required by amended independent Claim 1. The Examiner's additional citation of McCue '216 fails to overcome this deficiency, as McCue '216 does not disclose or suggest an elongate member including a shaft having a superior end and an inferior end and a radially projecting external shoulder formed adjacent the superior end, *the external shoulder of the elongated member seated in a through-channel*. Specifically, similar to Fabian '853, McCue '216 fails to disclose or suggest the external shoulder of modular stem 42 *seated in* a through-channel defined by tibial tray 12 and modular keel 14, as called for in amended independent Claim 1.

For at least the foregoing reasons, Applicant respectfully submits that Claims 5-7, 10, and 12, which depend from independent Claim 1, are not obvious over Fabian '853 in view of McCue '216.

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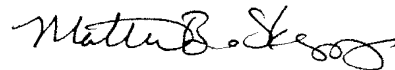
Application Serial No. 10/797,663
Amendment dated May 8, 2007
Reply to Office Action dated February 8, 2007

It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicant respectfully submits that the application is in condition for allowance and respectfully requests allowance thereof.

In the event Applicant has overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicant hereby petitions therefor and authorizes that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: May 8, 2007

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May 8, 2007

Date